

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

AIR MASTER AWNING, INC.

Plaintiffs

vs.

GREEN WINDOWS, CORP., RICARDO SOSA
PADRO, his wife JANE DOE and the conjugal
partnership formed between them;
COMPANIES A-Z; JOHN DOE; PATTY POE

Defendants

CIVIL NO.

INJUNCTION AND COMPLAINT FOR
COPYRIGHT INFRINGEMENT,
UNFAIR COMPETITION AND
DAMAGES

DEMAND FOR JURY TRIAL

COMPLAINT

TO THE HONORABLE COURT:

COME NOW plaintiff AIR MASTER AWNING, INC., through the undersigned legal representation, and very respectfully STATE, REQUEST AND PRAY:

JURISDICTIONAL ALLEGATIONS

1. The present is a civil action seeking injunctive relief and damages for copyright infringement and unfair competition under the Copyright Act of the United States, 17 U.S.C. § 101, et seq. and Puerto Rico jurisprudence.

2. This Honorable Court is vested with subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

3. This Honorable Court has personal jurisdiction over the parties because, among other things, co-defendants are doing business in the Commonwealth of Puerto Rico and this judicial district, the acts of infringement complained of herein occurred in the Commonwealth of Puerto Rico and this judicial district, and co-defendants have

caused injury to Plaintiff and their intellectual property and are within the Commonwealth of Puerto Rico and this judicial district.

4. Venue is proper in this Court pursuant to Section 1391 of Title 28 of the United States Code, 28 U.S.C. §1391, because the claims asserted arose in this judicial district.

5. Plaintiff demands a jury trial.

6. All codefendants are jointly and severally responsible to plaintiff for the damages suffered by them.

THE PARTIES

7. For more than 30 years plaintiff AIR MASTER AWNING, INC. (hereinafter "Air Master") has been a corporation duly formed and authorized under the laws of the Commonwealth of Puerto Rico, in good standing, which manufactures, sells and installs aluminum and crystal doors and windows. Air Master contributes to the Puerto Rico economy by hiring approximately 500 employees and supplying its product to the local market and to the mainland. Air Master is the only company in the Commonwealth of Puerto Rico that has several products that have been certified by the Miami Dade County as resistant to impact and hurricane winds. Miami Dade County is the most respected authority in the certification of windows against impact and hurricane winds. Air Master's facilities are located at Carr. #2 Interior, Km. 56.7, Barceloneta, PR. Air Master's postal address is P.O. Box 2097, Barceloneta, PR 00617 and its telephone number is 787-623-1800.

8. Co-defendant GREEN WINDOWS, CORP. (hereinafter "Green Windows") is, upon belief and information, a corporation duly formed and authorized under the laws

of the Commonwealth of Puerto Rico, which is a re-seller of aluminum and crystal doors and windows. Green Windows' facilities are located at Calle D #321, Urb. Industrial Minillas, PR #174, Bayamón, PR 00959.

9. Co-defendant RICARDO SOSA PARDO (hereinafter "Sosa") is, upon belief and information, of legal age, married with Jane Doe, which whom he has a conjugal partnership of which he is the co-administrator. He is also the president and resident agent of Green Windows. Sosa is jointly and severally liable amongst Green Windows to Air Master since he knew or should have known and authorized or constructively authorized that copyrighted material property of Air Master be usurped to be used for Green Windows to be used in their publicity. Sosa had personal knowledge or should have had personal knowledge of the illegal use of Air Master's copyright property in Green Windows' website and on Green Windows Facebook page and had personal knowledge that this is not the first time Green Windows infringes Air Master's copyrights.

10. Co-defendants COMPANIES A-Z are legal entities that caused or contributed to causing the damages to Plaintiff. Also, and in the alternative, they are insurance companies which at the time the facts of this case took place had in full force and effect insurance policies in favor of co-defendants.

11. Co-defendants JOHN DOE and PATTY POE are all codefendants of unknown identity that caused and contributed to causing Plaintiff damages. Their identities will be revealed once they are known through discovery.

12. All of the named defendants are jointly and severally responsible to Plaintiff for the damages caused to them. All defendants fictitiously named herein, will be correctly named once their identities are determined.

THE RELEVANT FACTS

13. On or about September 2017, Air Master obtained knowledge that Green Windows was using a photograph (hereinafter “the infringed photograph”), owned by Air Master, in Green Windows’ Facebook page (www.facebook.com/greenwindows) as part of its media and publicity campaign. (See Exhibit 1).

14. Said infringed photograph shows five aluminum and crystal doors, which were manufactured, installed and sold by Air Master to Mrs. María Elena Méndez. Furthermore, Air Master contracted the services of a photographer to photograph those doors or project to be used a promotional material of the services provided by Air Master. (See Exhibit 1 and Exhibit 2).

15. The infringed photograph was published on Air Master’s Facebook page (www.facebook.com/airmasterpr) on October 5, 2012, along with three more photographs of the same doors but from different angles. (See Exhibit 1 and Exhibit 2).

16. According to Green Windows’ Facebook page, Green Windows published a post on September 2, 2016 using the infringed photograph and included the following caption:

“¿Por qué conformarse con ok cuando puedes tener espectacular? Llama hoy al 787-519-8220 y coordina tu cita libre de costo. #remodela #puertas #ventanas #aluminio #cristal”. (See Exhibit 3).

17. Furthermore, Green Windows’ included in the infringed photograph its logo, expressly and irrevocably taking credit as authors of said photographs, when in fact Air Master is the only lawful author and owner of said Photograph since on or about October 5, 2012. (See Exhibit 3).

18. This is not the first time Green Windows has knowingly and illegally used a photograph owned by Air Master to use in its own publicity campaigns and webpages.

19. On May 2, 2014, the undersigned sent a certified letter to Green Windows, through its president co-defendant Sosa, stating that Air Master has obtained knowledge that Green Windows had been using photographs owned by Air Master in its webpages and in material that was distributed to the designers and decorators of Puerto Rico, that said action was a copyright infringement and requesting Green Windows to cease and desist from infringing Air Master's intellectual rights. (See Exhibit 4). The photographs of doors and windows designed and manufactured by Air Master were taken from the private residence of Air Master's president, Nicolas Megwinoff.

20. On June 25, 2014, the undersigned sent a second certified letter to Green Windows, through its president co-defendant Sosa, in which it was reiterated the claims against Green Windows and confirmed that Sosa had in fact received the May 2 letter and accepted that they in fact had illegally obtained the photographs and used them in its website. (See Exhibit 5). Sosa expressly admitted to knowing of the used of copyrighted material in Green Windows website.

21. Furthermore, Green Windows is stating publicly in its webpage and Facebook page that it re-sells aluminum and crystal windows and doors that are resistant to hurricanes, when in fact, Air Master is the only company in Puerto Rico that has received certifications from Miami Dade County certifying that a series of products of Air Master are resistant to impact and hurricanes. (See Exhibit 6).

COUNT I: Copyright Infringement (17 U.S.C. § 101, et seq.)

22. Plaintiff re-alleges and incorporates herein the allegations in Paragraphs 1-21.

23. By its actions alleged in this Complaint, co-defendants have directly and intentionally infringed Air Master's copyrights in and relating to the infringed photograph.

24. Co-defendants acts of infringement are willful, intentional and purposeful, in disregard of and with indifference to Air Master's rights. These allegations are further supported by the fact that this is not the first time Green Windows has illegally used photographs owned by Air Master in its webpages and for publicity purposes.

25. Co-defendants have reproduced the infringed photograph, displayed them publicly on an unlimited and unrestricted basis without permission in violation of the 17 U.S.C. § 106.

26. Co-defendants intentionally and/or negligently copied and publicly distributed and publicly displayed the infringed photograph by placing them on its server, enabling them to appear on its website and Facebook page.

27. Under 17 U.S.C. § 101, et seq., Air Master is the author and owner of the Photograph and co-defendants have had access to and intentionally copied Air Master's Photograph.

COUNT 2: Unfair competition under Puerto Rico substantive law

28. Green Windows is stating publicly in its webpage and Facebook page that it re-sells aluminum and crystal windows and doors that are resistant to hurricanes, when in fact, Air Master is the only company in Puerto Rico that has received certifications from Miami Dade County certifying that a series of products of Air Master are resistant to impact and hurricanes. Green Windows shows no testing or

certifications that said representations are correct. Green Windows products do not meet the necessary qualifications to withstand impact and hurricane forces.

29. The unfair competition doctrine provides a remedy to a business against the dishonest, unjust and unjustifiable acts of a competitor. Green Windows' unjust acts in passing Air Master's products as their own constitute unfair competition. The law affords the honest business and the consumer protection from the fraudulent, deceptive and dishonest misrepresentations from the competitor, in this case Green Windows. By asserting that their products are certified against impact and hurricanes, which they are not, Green Windows is misleading the public to believe that their products are of equal quality of that of Air Master's. By doing so, Green Windows is affecting Air Master's goodwill and reputation in the industry, as the products the offer are of inferior quality and inferior price than those of Air Master.

DAMAGES

30. As a direct and proximate result of co-defendants infringement, Air Master is entitled to damages it has sustained and will sustain, and any gains, profits and advantages obtained by co-defendants as a result of their willful and intentional acts of infringement alleged in the Complaint pursuant to 17 U.S.C. § 504 and unfair competition practices.

31. Plaintiff's understands that as of today, Codefendants willing full infringement of Air master's copyright and unfair competition has caused damages in excess of \$10,000,000.00, in lost sales and/or sales and loss of goodwill and reputation that codefendants may have gained through the use of Air Master's copyrighted materials and loss of goodwill.

URGENT INJUNCTIVE RELIEF

32. As a direct and proximate result of the foregoing acts and conduct, Air Master has sustained and will continue to sustain substantial, immediate and irreparable injury, for which there is no adequate remedy at law.

33. Unless co-defendants are restrained by this Honorable Court from using, distributing and publishing the infringed photograph they will continue to infringe Air Master's rights. Also, defendants should be restrained from unfairly competing with Air Master and from being dishonest to the consumer. Therefore, Air Master requests a preliminary or permanent injunctive relief hearing in an urgent manner to restrain and enjoin co-defendants' conduct.

34. In the alternative Air Master very respectfully request from this Honorable Court that an order be entered precluding codefendants from using Air Master's copyright property in a forthwith manner.

35. Air Master is also entitled to attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

WHEREFORE, Plaintiff respectfully requests from this Honorable Court judgment against co-defendants, each jointly and severally, as follows:

1. For damages in such amount as may be found, or as otherwise permitted by law.
2. For an accounting of, and the imposition of constructive trust with respect to, co-defendants' profits attributable to their infringement of Plaintiff's copyright in the infringed photograph.

3. For preliminary and permanent injunction prohibiting co-defendants, and their agents, employees, officers, contractors, and all person acting in concert or participation with each or any of them, from continuing to infringe Plaintiff's copyright in the infringed photograph and from performing unfair competition in the market against Air Master and the consumer.
4. For Plaintiff's damages and attorneys' fees pursuant to 17 U.S.C. §§ 504-505.
5. For prejudgment and post-judgment interests on any monetary award in this action.
6. For such other and further relief as this Honorable Court deems just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 13 day of October, 2017.

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